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Re: DBS Proposal (MM Docket No. 93-25)

Dear Ms. Chiara:

Somewhat belatedly, I wanted to write, thanking you for your time (and that of Frank Peace) earlier this month on behalf of my client, Greenwood Finance, Inc., owned by Greenwood Racing, Inc., the operator of Philadelphia Park Race Course ("Philadelphia Park").

As you will recall, Philadelphia Park intends to begin a Ku-band DBS service within the next few months, offering eight stand-alone channels of service, consisting of horse racing news, features and events. The capacity to provide this service will be subleased on an existing satellite.

A concern has arisen that the public service obligations presently being considered by the

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Commission for the DBS Service might in fact be applied to a system with as few as eight channels. This comes as a result of the original Notice of Proposed Rule Making in MM Docket No. 93-25 (released March 9, 1993) and the more recent request for additional Comments (released January 31, 1997). It is my understanding that the Commission staff is currently drafting its Report and Order.

For the reasons set forth below, Philadelphia Park urges the Commission to adopt regulations that do not require allocating portions of channels to noncommercial use. The Commission should require that only full channels be devoted to this kind of use. Therefore, using the four to seven percent benchmark set by Congress, no system of less than 25 channels (at the four percent benchmark) or less than 15 channels (at the seven percent benchmark) would be subject to public service obligations. Indeed, the Commission could, as it suggests in the NPRM, adopt a standard of, e.g., 20-29 channels: one noncommercial; 30-39 channels: two noncommercial, etc.

The statutory history of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") offers little insight as to what was expected from the FCC in the way of obligations being placed on DBS operators in this context. There is simply a statement from Congress that it wanted DBS providers to offer between four and seven per cent of channel capacity for noncommercial use.

On March 2, 1993, the Commission opened MM Docket No. 93-25 which dealt with many of the questions. Specifically, the Commission said

Next, how should we determine the percentage or number of channels that should be reserved for noncommercial use? Should DBS systems with relatively large total channel capacity be subjected to a greater reservation requirement than systems with relatively less total capacity, as suggested in the *Conference Report*? If so, how do we define a DBS system with a large channel capacity? Also, should the reservation requirement be cast in terms of a percentage or a discrete whole number of channels that must be reserved? Since the number of channels in DBS systems will likely vary, using a percentage could result in requirements such as 3.5 channels being reserved. To avoid having to reserve parts of channels, we propose that a sliding scale be used so that systems falling into various categories (such as having 20 to 30 channels) would be required to reserve a specific number of channels. These numbers would accommodate the Congressional intent that between four and seven percent of channel capacity be reserved.

(Emphasis added.) MM Docket No. 93-25 at Para. 40.

The use of a minimum number of channels such as 20, along with a set-aside of full channels for noncommercial use, would avoid the necessity for a small, specialized DBS

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operator, such as Philadelphia Park intends, to become skilled in programming totally outside its area of expertise. It would avoid the need to hire staff just for the purpose of overseeing the noncommercial portion of its DBS system, which is totally unrelated to its programming and business goals.

In the case of Philadelphia Park's planned system, even the highwater legislative proposal of seven percent would mean devoting .56 percent of one channel (while four percent would mean .32 percent of one channel). The burden of doing that far outweighs the benefits that would accrue to the public.

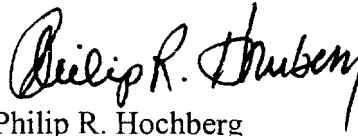
Moreover, setting a channel minimum and requiring full channels be allocated to public service use means the Commission would not be faced with deciding when, during the broadcast day, the noncommercial segment must be aired. It would avoid all of the problems that would be associated with micromanagement by the FCC.

Finally, imposing such requirements on a small, specialized operator such as Philadelphia Park would substantially affect the viability of its business plan and inhibit the independent supply of video programming directly to consumers. This effect would be the opposite of that generally sought by the Commission in promoting competition and making available to the public a diversity of programming from independent sources.

Philadelphia Park appreciates the opportunity to make known its views.

Thanking you again, I am

Sincerely,



Philip R. Hochberg

cc: Commissioner's Staffs

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